

REMARKS/ARGUMENTS

This amendment is in response to the Office action dated January 14, 2010. Claims 12-23 are pending in this application. New claims 21-23 have been added.

**Claim Rejections - 35 USC §102**

On page 3 of the action, claims 12-19 rejected under 35 U.S.C. 102(b) as anticipated by Howe et al. (US Patent 4,694,781). Applicant respectfully traverses this rejection.

To be anticipating, a prior art reference must disclose each and every limitation of the claimed invention, the prior art must be enabling, and the prior art reference must describe the claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F. 3d 1339 (Fed. Cir. 2000).

Claim 12 recites:

Ear tag for marking and identifying animals, the ear tag including a male tag component, a female tag component and a sampling device, wherein:

a) the male tag component includes a punch that, in use, perforates an animal's ear and penetrates into a hollow head of the female tag component under the action of an applicator tool, having jaws;

b) the sampling device, includes an absorbent material, is fixed in a non-permanent manner to the female tag component and is arranged such that, in use, when the punch penetrates an animal's ear and penetrates into the hollow head of the female tag component, the punch passes through the absorbent material, the sampling device thereby sampling biological material extracted from the ear of the animal when it is pierced by the punch, said sampling device extending laterally to the female tag component being separable therefrom, and

c) the sampling device further includes an attachment for fixing the sampling device to one of the jaws of the applicator tool whereupon, during use opening of the jaws and/or removal of the applicator tool from the animal's ear separates the sampling device from the female tag component.

As provided in the claimed invention, Applicant's ear tag is *particularly structured* to fix a sampling device's absorbent material in a non-permanent manner to the female tag component of the ear tag which is particularly useful, e.g., to sample or absorb biological material extracted from the ear of an animal when it is pierced by the punch of the male tag component.

On page 3 of the action, it is indicated that Howe describes a "female tag component (10) contains a sampling device (33) that is capable of sampling biological material from the ear of the animal. The sampling device extends outwardly from element 12 of the female tag component. The sampling device is separable from the female tag component (see Figure 5). The sampling device also contains an attachment (29) that can be used to attach to an applicator tool."

However, Howe describes, in col. 4, lines 45-51, a "felt disc or sponge insert 33 saturated with liquid insecticide, insect repellent, or other liquid or solid first placed in the container 29. After the saturated felt or sponge insert 33 is placed in the container 29, a rigid plastic (or metal) locking washer 31 is pressed to fit in the groove 30." Conversely, the claimed invention provides a sampling device where in use samples biological material extracted from the ear of the animal when it is pierced by the punch.

Additionally, Howe describes, in col. 4, lines "removal of the container 29 is accomplished by squeezing it with a pair of pliers to crush the locking washer/ring 31. Once this has been accomplished, the button-like housing 29 falls away or easily may be pulled off the boss 12; so that it can be replaced with a fresh housing 29 if desired." Hence, the container must be crushed in order to remove it from the ear tag and is

therefore not suitable for sampling. Furthermore, the container is not separated from the ear tag by operation of the applicator tool, during fixing of the ear tag to the animal as provided by claim 12.

Howe also describes in col. 4, lines 57-67, that the "container 29, with the locking washer 31 pressed in place behind the lip of the groove 30, is pressed onto the boss 12 as illustrated in FIG. 7. This causes a distortion of the teeth 32 of the locking washer 31 to firmly hold the locking washer in place and therefore hold the container 29 in place on the boss 12 of the ear tag 10. The liquid in the saturated felt washer 33 then oozes through the holes 34 and the spaces between the adjacent teeth 32 onto the ear tag 10, from which it passes onto the animal in the manner described previously to accomplish its desired purpose." As such, Howe describes a container 29 with a felt washer 33 that is applied to an ear tag already attached to an animal's ear. This is contrary to the sampling device and absorbent material that is connected to the female ear tag component during application of the ear tag to the animal as provided by claim 12. Also, claim 12 requires that the absorbent material be arranged such that the punch of the male component passes through it when the ear tag is applied. As provided above with reference to col. 4, lines 57-67, Howe's punch does not pass through the sponge 33.

Howe also does not describe an attachment for fixing the sampling device to one of the jaws of the applicator tool whereupon, during use opening of the jaws and/or removal of the applicator tool from the animal's ear separates the sampling device from the female tag component" as provided by claim 12. Howe only describes that the container 29 with a locking washer 31 is pressed onto the boss 12 of the ear tag or crushed with a pair of pliers to remove the container. (See col. 4, 57-62 and col. 5, lines 4-6). Thus, Howe does not describe an attachment for fixing the sampling device to one of the jaws of the applicator tool. Also, the claimed invention provides that following application of the ear tag, the sampling device is separated from the female ear tag

component by opening of the jaws and/or removal of the applicator tool from the animal's ear which is not described by Howe.

Based on the foregoing, Applicant respectfully submits that Howe fails to disclose each and every element of independent claim 12 and thus Howe cannot anticipate claim 12. Claim 12 is, therefore, allowable over the cited references and thus Applicant respectfully requests reconsideration and withdrawal of the rejection.

Claims 13-19 depend from independent claim 1. As noted above, independent claim 12 is believed to be allowable over Howe for the reasons stated. Accordingly, reconsideration and withdrawal of the claim rejection are respectfully requested.

Also, regarding claim 14, claim 14 recites in part that the absorbent material is a sampling strip. The action on page 3 indicates that the "absorbent material (33) is capable of serving as a sampling strip." However, Howe does not describe a sampling strip. Howe at most describes a "felt washer", "felt disc or sponge insert". (See col. 4, lines 46 and 63; Figures 6-7). Howe also does not describe that the felt washer, felt disc or sponge insert is capable of serving as a sampling strip. Thus, since Howe must disclose each and every limitation of the claimed invention to anticipate claim 14, Howe does not anticipate claim 14 and therefore claim 14 is believed to be patentable.

Also, regarding claim 19, claim 19 recites that the attachment and the sampling device include a slit over an opening of the hollow head of the female tag component. However, the Howe and the action are silent as to describing a slit included in the attachment and the sampling device over an opening of the hollow head of the female tag component. Thus, since Howe must disclose each and every limitation of the claimed invention to anticipate claim 19, Howe does not anticipate claim 19 and therefore claim 19 is believed to be patentable.

### **Claim Rejections - 35 USC §103**

On page 4 of the action, Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe '781, as applied to Claim 12, in view of Brem (US Patent 6,509,187). Applicant respectfully traverses this rejection.

Claim 20 depends from independent claim 12. As noted above, independent claim 12 is believed to be allowable over Howe for the reasons stated. The additional cited reference of Brem does not cure the deficiencies of Howe. Accordingly, a prima facie case of obviousness is not established and hence reconsideration and withdrawal of the claim rejections in view of their respective asserted rejections are respectfully requested.

### **New claims 21-23**

New claims 21-23 describe other features of the present invention. The cited references do not describe or suggest such an ear tag as provided in new claims 21-23. Also, since claims 21-23 depend from independent claim 12 and thus incorporate the features recited in the corresponding claim and contains additional limitations that, when considered as a whole are patentably distinguishable over the references of record, claim 21-23 are believed to be patentable. Applicant also notes that claimed features recited in new claims 21-23 are supported in the written description (e.g., paragraphs [0047], [0055-0056], [0061] and Figures 2, 9 and 12). Accordingly, new claims 21-23 do not contain any new matter.

### **Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance. Accordingly, reconsideration of the application and allowance of the claims are respectfully requested. Although the

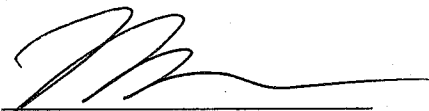
present paper may include a combination of alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding that previously pending claims in this application are not patentable over the cited references. Rather, any alterations and/or characterizations are made to strictly facilitate prosecution of this application. As such, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. If the Examiner should have any remaining questions or objections, a telephone interview to discuss and resolve these issues is respectfully requested.

Respectfully submitted,

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